

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

PETE’S MOBILE HOMES, INC., et al.,

Plaintiffs,

v.

NO. 1:95CV259-S-D

BOARD OF SUPERVISORS, LEE  
COUNTY, MISSISSIPPI,

Defendant.

OPINION

In this case, the plaintiffs, mobile home dealers in Lee County, Mississippi, contest the constitutionality of an ordinance passed by the Board of Supervisors of Lee County, Mississippi, which regulates the placement of mobile homes within the county. Presently before the court are the parties’ cross-motions for summary judgment. For the most part, the facts are not in dispute, and the parties agree that the questions presented are legal in nature. Although they have fully briefed every legal aspect of this case, the parties have, for the most part, glossed over what, in this court’s mind, is the critical issue—standing.

Under Article III of the United States Constitution, this court has jurisdiction over this matter only if it is a “case” or “controversy.” *Raines v. Byrd*, \_\_\_\_ U.S. \_\_\_\_, 117 S.Ct. 2312, 2316 138 L.Ed.2d 849 (1997). “This is a ‘bedrock requirement.’” *Id.* One element of the case or controversy requirement is that plaintiffs, based on their complaint, must establish that they have standing to sue. *Id.*

[T]he irreducible constitutional minimum of standing contains three elements. First,

the plaintiff[s] must have suffered an “injury in fact”—an invasion of a legally protected interest which is (a) concrete and particularized and (b) “actual and imminent, not ‘conjectural’ or ‘hypothetical.’” Second, there must be a causal connection between the injury and the conduct complained of—the injury has to be “fairly...trace[able] to the challenged action of the defendant, and not...th[e] result [of] the independent action of some third party not before the court.” Third, it must be “likely,” as opposed to merely “speculative,” that the injury will be “redressed by a favorable decision.”

*Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992) (citations omitted). These are not “mere pleading requirements”; instead, they are an “indispensable part” of the plaintiffs’ case, and each “element must be supported in the same way as any other matter on which the plaintiff[s] bear[] the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation.” *Id.* at 561.

At the pleading stage, general factual allegations of injury resulting from the defendant[s’] conduct may suffice....In response to a summary judgment motion, however, the plaintiff[s] can no longer rest on such “mere allegations,” but must “set forth” by affidavit or other evidence “specific facts” which for purposes of the summary judgment motion will be taken as true.

*Id.*; see also *id.* at 566 (at summary judgment stage, standing requires a “factual showing of perceptible harm”).

As noted, the first element of standing requires proof of an injury in fact. The injury in fact test “requires more than an injury to a cognizable interest. It requires that the part[ies] seeking review be [themselves] among the injured.” *Id.* at 562. The injury must be not only actual but also imminent. “Although ‘imminence’ is concededly a somewhat elastic concept, it cannot be stretched beyond its purpose, which is to ensure that the alleged injury is not too speculative for Article III purposes—that the injury is ‘*certainly* impending.’” *Id.* at 564 n. 2 (emphasis in original).

In this case, the only injury that could possibly result to these plaintiffs is a loss of income, either through lower mobile home sales or the inability to develop mobile home parks to the extent

plaintiffs would like. The sole affidavit submitted in this regard is from the president of plaintiff Southern Housing, Inc., who avers as follows:

In the early 1980's, I owned two franchise lots in DeSoto County, Mississippi. At one time the lots were prosperous. During the time I owned the lots, the county enacted a restrictive zoning ordinance against manufactured homes. Because of the ordinance, which includ[ed] lot size restrictions for manufactured homes, my business decreased so that I had to eventually close the lots. I feel that if the Lee County Mobile Home Ordinance is strictly enforced as written...my business will be damaged and sales will decline.

Having carefully considered the matter, the court finds that this is insufficient to support the standing of these plaintiffs to pursue this litigation. The possibility that plaintiffs (giving them the benefit of the doubt that this one plaintiff can speak for all) may lose business because of the ordinance clearly fails to demonstrate an injury in fact. *See also id.* at 564 (past exposure to illegal conduct does not show present case or controversy if unaccompanied by any continuing, present adverse effects). At best, plaintiffs have shown an invasion of a legally protected interest which is merely conjectural and hypothetical. Plaintiffs can therefore not pass the first minimum requirement for standing, and defendant is entitled to dismissal of this action.

An appropriate order and final judgment shall issue.

This \_\_\_\_\_ day of August, 1998.

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SENIOR JUDGE